

SENATE JOURNAL

OF THE

IDAHO LEGISLATURE

SECOND REGULAR SESSION
SIXTY-FIRST LEGISLATURE

**THIRTY-FIRST LEGISLATIVE DAY
WEDNESDAY, FEBRUARY 8, 2012**

Senate Chamber

President Little called the Senate to order at 11 a.m.

Roll call showed all members present.

Prayer was offered by Chaplain Keith Buhler.

The Pledge of Allegiance was led by Chase Bower, Page.

The Senate advanced to the Third Order of Business.

Reading and Correction of the Journal

The JUDICIARY AND RULES Committee reports that the Senate Journal of the proceedings of February 7, 2012, was read and approved as corrected.

DARRINGTON, Chairman

There being no objection, the report was adopted and ordered filed in the office of the Secretary of the Senate.

On request by Senator Davis, granted by unanimous consent, the Senate advanced to the Fifth Order of Business.

Petitions, Resolutions, and Memorials

SCR 114 BY HEALTH AND WELFARE COMMITTEE

A CONCURRENT RESOLUTION

STATING FINDINGS OF THE LEGISLATURE AND REJECTING CERTAIN RULES OF THE DEPARTMENT OF HEALTH AND WELFARE RELATING TO MEDICAID ENHANCED PLAN BENEFITS.

Be It Resolved by the Legislature of the State of Idaho:

WHEREAS, the Legislature is vested with authority to reject executive agency rules under the provisions of Section 67-5291, Idaho Code, in the event that the Legislature finds that the rules are not consistent with legislative intent; and

WHEREAS, it is the finding of the Legislature that certain rules of the Department of Health and Welfare relating to Medicaid Enhanced Plan Benefits are not consistent with legislative intent and should be rejected.

NOW, THEREFORE, BE IT RESOLVED by the members of the Second Regular Session of the Sixty-first Idaho Legislature, the Senate and the House of Representatives concurring therein, that IDAPA 16.03.10, Department of Health and Welfare, Rules Governing Medicaid Enhanced Plan Benefits, Section 119, Subsections 02.b and 03, Section 140, Subsections 08.b and 09, Section 659, Subsections 01.b and 02, Section 706, Subsections 04 and 05, and Section 736, Subsections 09 and 10, only, adopted

as pending rules under Docket Number 16-0310-1104, be, and the same are hereby rejected and declared null, void and of no force and effect.

SCR 115

BY HEALTH AND WELFARE COMMITTEE

A CONCURRENT RESOLUTION

STATING FINDINGS OF THE LEGISLATURE AND REJECTING A CERTAIN RULE OF THE BUREAU OF OCCUPATIONAL LICENSES RELATING TO RULES OF THE BOARD OF DRINKING WATER AND WASTEWATER PROFESSIONALS.

Be It Resolved by the Legislature of the State of Idaho:

WHEREAS, the Legislature is vested with authority to reject executive agency rules under the provisions of Section 67-5291, Idaho Code, in the event that the Legislature finds that the rules are not consistent with legislative intent; and

WHEREAS, it is the finding of the Legislature that a certain rule of the Bureau of Occupational Licenses relating to Rules of the Board of Drinking Water and Wastewater Professionals is not consistent with legislative intent and should be rejected.

NOW, THEREFORE, BE IT RESOLVED by the members of the Second Regular Session of the Sixty-first Idaho Legislature, the Senate and the House of Representatives concurring therein, that IDAPA 24.05.01, Bureau of Occupational Licenses, Rules of the Board of Drinking Water and Wastewater Professionals, Section 375, Subsection 02.c, only, adopted as a pending rule under Docket Number 24-0501-1101, be, and the same is hereby rejected and declared null, void and of no force and effect.

SCR 116

BY STATE AFFAIRS COMMITTEE

A CONCURRENT RESOLUTION

STATING FINDINGS OF THE LEGISLATURE AND AUTHORIZING THE LEGISLATIVE COUNCIL TO APPOINT A COMMITTEE TO UNDERTAKE AND COMPLETE A STUDY OF THE FEASIBILITY AND MEANS NECESSARY OF WHAT WOULD BE NEEDED FOR THE STATE OF IDAHO TO OBTAIN PRIMACY OVER REGULATION OF WASTEWATER DISCHARGES TO SURFACE WATER.

Be It Resolved by the Legislature of the State of Idaho:

WHEREAS, government that is the closest to the people is the best and most responsive government; and

WHEREAS, it would be beneficial for the Department of Environmental Quality to have primacy over regulation of wastewater discharges to surface water under the National Pollutant Discharge Elimination System (NPDES) program; and

WHEREAS, entities seeking or complying with a NPDES permit are subject to distant interaction and must get decision making by the U.S. Environmental Protection Agency regarding issues with wastewater treatment and disposal; and

WHEREAS, it would be a great benefit to municipalities, industry and society to determine the costs and feasibility of the NPDES program as well as the authority that would be given to the state of Idaho by the U.S. Environmental Protection Agency to operate the program.

NOW, THEREFORE, BE IT RESOLVED by the members of the Second Regular Session of the Sixty-first Idaho Legislature, the Senate and the House of Representatives concurring therein, that the Legislative Council is authorized to appoint a committee to undertake and complete a study of the resources necessary and any change in statutes or rules to obtain primacy

over the regulation of wastewater NPDES program. The Legislative Council shall determine the number of legislators and membership from each house appointed to the committee and shall authorize the committee to receive input, advice and assistance from interested and affected parties who are not members of the Legislature. The Director of the Department of Environmental Quality is requested to assist the interim committee in providing information regarding the cost of such an endeavor, necessary funding sources and necessary statutory or rule changes that need to occur.

BE IT FURTHER RESOLVED that nonlegislative members of the committee may be appointed by the cochair of the committee who are appointed by the Legislative Council. Nonlegislative members of the advisory committee shall not be reimbursed from legislative funds for per diem, mileage or other expenses and shall not have voting privileges regarding the committee's recommendations or proposed legislation.

BE IT FURTHER RESOLVED that the committee shall report its findings, recommendations and proposed legislation, if any, to the First Regular Session of the Sixty-second Idaho Legislature.

[SCR 114](#), [SCR 115](#), and [SCR 116](#) were introduced, read at length, and referred to the Judiciary and Rules Committee for printing.

The Senate advanced to the Sixth Order of Business.

Reports of Standing Committees

February 8, 2012

The JUDICIARY AND RULES Committee reports that [S 1291](#), [S 1292](#), [S 1293](#), [S 1294](#), and [S 1295](#) have been correctly printed.

DARRINGTON, Chairman

[S 1291](#) was referred to the Resources and Environment Committee.

[S 1292](#) was referred to the Judiciary and Rules Committee.

[S 1293](#), [S 1294](#), and [S 1295](#) were referred to the Health and Welfare Committee.

February 7, 2012

The AGRICULTURAL AFFAIRS Committee reports out [S 1236](#) and [S 1259](#) with the recommendation that they do pass.

SIDDOWAY, Chairman

[S 1236](#) and [S 1259](#) were filed for second reading.

February 7, 2012

The JUDICIARY AND RULES Committee reports that Enrolled [SJR 102](#) was delivered to the Office of the Secretary of State at 1:50 p.m., February 7, 2012.

DARRINGTON, Chairman

The report was ordered filed in the office of the Secretary of the Senate.

February 7, 2012

The HEALTH AND WELFARE Committee reports it has had under consideration the Gubernatorial appointment listed below and the Committee recommends that said appointment be confirmed by the Senate:

Michael D. Gibson to the Commission for the Blind and Visually Impaired, term to expire July 1, 2014.

LODGE, Chairman

The Gubernatorial appointment was referred to the Tenth Order of Business, Motions and Resolutions, and ordered held at the Secretary's desk for one legislative day.

On request by Senator Davis, granted by unanimous consent, the Senate advanced to the Ninth Order of Business.

Messages from the House

February 7, 2012

Dear Mr. President:

I transmit herewith [H 394](#), which has passed the House.

ALEXANDER, Chief Clerk

[H 394](#) was filed for first reading.

February 7, 2012

Dear Mr. President:

I return herewith [S 1223](#), [S 1257](#), [S 1258](#), and [S 1267](#), which have passed the House.

ALEXANDER, Chief Clerk

[S 1223](#), [S 1257](#), [S 1258](#), and [S 1267](#) were referred to the Judiciary and Rules Committee for enrolling.

February 7, 2012

Dear Mr. President:

I transmit herewith Enrolled [H 357](#) and [H 363](#) for the signature of the President.

ALEXANDER, Chief Clerk

The President signed Enrolled [H 357](#) and [H 363](#) and ordered them returned to the House.

On request by Senator Davis, granted by unanimous consent, the Senate advanced to the Eleventh Order of Business.

Introduction, First Reading, and Reference of Bills, House Petitions, Resolutions, and Memorials

S 1296

BY AGRICULTURAL AFFAIRS COMMITTEE

AN ACT

RELATING TO LIVESTOCK PROCEEDS; AMENDING SECTION 25-1174, IDAHO CODE, TO PROVIDE THAT CERTAIN MONEYS THAT ESCHEAT TO THE STATE SHALL BE DEPOSITED INTO THE STATE BOARD OF EDUCATION'S MISCELLANEOUS REVENUE FUND FOR APPROPRIATION TO CERTAIN PUBLIC EDUCATION AND/OR HIGHER EDUCATION PROGRAMS AS DIRECTED BY THE IDAHO CATTLE FOUNDATION, INC., AND TO PROVIDE A DATE BY WHICH SUCH DIRECTION SHALL BE GIVEN.

S 1297
BY EDUCATION COMMITTEE
 AN ACT

RELATING TO EDUCATION; AMENDING SECTION 33-517, IDAHO CODE, TO REVISE PROVISIONS RELATING TO POWERS AND DUTIES OF SCHOOL DISTRICTS, TO REVISE PROVISIONS RELATING TO CERTAIN GRIEVANCE PROCEDURES RELATING TO NONCERTIFICATED PERSONNEL AND TO MAKE A TECHNICAL CORRECTION.

S 1298
BY STATE AFFAIRS COMMITTEE
 AN ACT

RELATING TO CODIFIER'S CORRECTIONS IN STATUTES; AMENDING SECTION 8-507C, IDAHO CODE, TO MAKE CODIFIER'S CORRECTIONS AND TO MAKE A TECHNICAL CORRECTION; AMENDING SECTION 36-1401, IDAHO CODE, TO PROVIDE A CORRECT CODE REFERENCE; AMENDING SECTION 39-302, IDAHO CODE, TO REMOVE REFERENCE TO ARCHAIC LANGUAGE; AMENDING SECTION 39-303A, IDAHO CODE, TO REMOVE REFERENCE TO ARCHAIC LANGUAGE AND TO MAKE A TECHNICAL CORRECTION; AMENDING SECTION 39-304, IDAHO CODE, TO REMOVE REFERENCE TO ARCHAIC LANGUAGE; AMENDING SECTION 41-1941, IDAHO CODE, TO MAKE A TECHNICAL CORRECTION; AMENDING SECTIONS 56-234, 56-234A, 56-235A, 56-235B AND 56-235C, IDAHO CODE, TO MAKE CODIFIER'S CORRECTIONS; AMENDING SECTION 56-264, IDAHO CODE, TO PROVIDE A CORRECT CODE REFERENCE; AMENDING SECTION 57-813, IDAHO CODE, TO INCREASE THE AMOUNT OF COUNTY DEDUCTIBLE; AND AMENDING SECTION 67-821, IDAHO CODE, TO REMOVE REFERENCE TO ARCHAIC LANGUAGE.

S 1296, S 1297, and S 1298 were introduced, read the first time at length, and referred to the Judiciary and Rules Committee for printing.

H 394, by Education Committee, was introduced, read the first time at length, and referred to the Education Committee.

The Senate advanced to the Twelfth Order of Business.

Second Reading of Bills

S 1265, S 1266, H 382, H 384, and S 1255, by Health and Welfare Committee, were read the second time at length and filed for third reading.

On request by Senator Davis, granted by unanimous consent, the Senate advanced to the Fourteenth Order of Business.

General Calendar

The President declared the Senate resolved into the Committee of the Whole and called Senator Winder to the Chair to preside during the sitting of the Committee of the Whole.

Following the adjournment of the Committee of the Whole, the President called the Senate to order.

Report of the Committee of the Whole

Senator Winder, Chairman of the Committee of the Whole, reported out H 404 and H 358, without recommendation, amended as follows:

SENATE AMENDMENT TO H 404
 AMENDMENT TO THE BILL

On page 1 of the printed bill, delete lines 9 through 41; and on page 2, delete lines 1 through 8, and insert:

"SECTION 1. LEGISLATIVE INTENT. Whereas, the Capitol Building and the Capitol Mall, as well as other state-owned and leased grounds and facilities, function as the vibrant core of Idaho State Government for Idaho citizens and, as such, require unobstructed grounds and convenient access to ensure the health and safety of all citizens including touring visitors and school children; and, whereas, the state should always strive to maintain the highest aesthetic standards for the grounds of the Capitol Mall, as well as other state-owned and leased grounds and facilities; and, whereas, the Capitol Mall and other state-owned and leased grounds and facilities should have consistent public use guidelines where appropriate with the local government; the Legislature now finds that it is in the best interest of the public health and safety of Idaho citizens to regulate the use of the grounds of the Capitol Mall and other state-owned and leased grounds and facilities in order to prevent the unauthorized use of these grounds and facilities as a temporary or permanent place for camping, lodging or living accommodations.

SECTION 2. That Chapter 16, Title 67, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 67-1613, Idaho Code, and to read as follows:

67-1613. CAPITOL MALL AND OTHER STATE PROPERTY AND FACILITIES – CAMPING PROHIBITED. No person shall camp on or in any state-owned or leased property or facility including, but not limited to, the capitol mall, except those that are designated as a recreational camping ground, area or facility. The provisions of this section shall not apply or affect policies, rules, statutes or leases on endowment lands, department of parks and recreation lands or department of fish and game lands. For the purposes of this section, the term "camp" or "camping" means to use as a temporary or permanent place of dwelling, lodging or living accommodation, and which indicia of camping may include, but are not limited to, storing personal belongings, using tents or other temporary structures for storing personal belongings or for sleeping, carrying on cooking activities, laying out bedding or making any fire. Any person who violates the provisions of this section shall be guilty of an infraction. Such persons shall be required to remove all their personal property from the state-owned or leased property.

SECTION 3. That Chapter 16, Title 67, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 67-1613A, Idaho Code, and to read as follows:

67-1613A. DISPOSITION OF PROPERTY. Any property remaining after issuance of a citation or any property left unattended shall be held by the agency or its agent removing the property in a secure location for a period of not less than ninety (90) days. Notice shall be posted and remain at the nearest reasonable location to the place of removal with the agency's or agent's contact information for the ninety (90) day period. If property is not claimed within the ninety (90) day period, the property shall be deemed abandoned and the agency shall have the right to dispose of the property. A reasonable storage fee as determined by the agency may be assessed at the time an owner

claims the property. The individual claiming the property shall produce identification and shall sign a release form providing his or her name and contact information and swearing that the property belongs to the claiming party. If the provisions of this section are complied with, the state of Idaho, its agents, employees and contractors shall be immune from legal liability for the administration of this section.

SECTION 4. SEVERABILITY. The provisions of this act are hereby declared to be severable and if any provision of this act or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of the remaining portions of this act.

SECTION 5. An emergency existing therefor, which emergency is hereby declared to exist, this act shall be in full force and effect on and after its passage and approval."

CORRECTION TO TITLE

On page 1, delete lines 2 through 7, and insert:
 "RELATING TO THE CAPITOL MALL AND OTHER STATE PROPERTY AND FACILITIES; PROVIDING LEGISLATIVE INTENT; AMENDING CHAPTER 16, TITLE 67, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 67-1613, IDAHO CODE, TO PROHIBIT CAMPING ON OR IN CERTAIN STATE PROPERTY AND FACILITIES, TO PROVIDE EXCEPTIONS, TO DEFINE A TERM AND TO PROVIDE FOR AN INFRACTION; AMENDING CHAPTER 16, TITLE 67, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 67-1613A, IDAHO CODE, TO PROVIDE PROCEDURES FOR DISPOSITION OF PROPERTY REMOVED FROM PUBLIC PROPERTY FOR VIOLATING A STATUTE THAT FORBIDS A CAMP OR CAMPING; PROVIDING SEVERABILITY; AND DECLARING AN EMERGENCY."

SENATE AMENDMENT TO H 358

AMENDMENT TO SECTION 1

On page 1 of the printed bill, delete line 19, and insert:
 "MAKE LEVY. On or before the ~~first~~ third Monday in July of each year, the".

AMENDMENT TO SECTION 2

On page 1, delete line 27, and insert: "fore the ~~first~~ third Monday in July of each year the county ~~assessor~~ auditor".

AMENDMENT TO SECTION 3

On page 1, delete line 35, and insert: "POSES – BOARD TO MAKE LEVY. On or before the ~~first~~ third Monday in July of".

The Committee also has [S 1215](#) under consideration, reports progress, and begs leave to sit again.

WINDER, Chairman

On motion by Senator Winder, seconded by Senator Stennett, the report was adopted by voice vote.

[H 404](#), as amended in the Senate, and [H 358](#), as amended in the Senate, were filed for first reading as amended, and the amendments thereto were referred to the Judiciary and Rules Committee for printing.

The Senate advanced to the Fifteenth Order of Business.

Miscellaneous Business

On motion by Senator Davis, seconded by Senator Stennett, by voice vote, the Senate adjourned at 12:15 p.m. until the hour of 11 a.m., Thursday, February 9, 2012.

BRAD LITTLE, President

Attest: JENNIFER NOVAK, Secretary